

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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Finance Docket No. 35236

JAMES RIFFIN – ACQUISITION AND OPERATION EXEMPTION –  
VENEER MFG CO. SPUR – IN BALTIMORE COUNTY, MD

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VERIFIED NOTICE OF EXEMPTION

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ENTERED  
Office of Proceedings

MAR 30 2009

Part of  
Public Record

**MOTION FOR A PROTECTIVE ORDER PURSUANT TO 49 CFR 1104.14**

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1. Comes now James Riffin (“Riffin”), pursuant to 49 CFR 1104 14, who herewith requests that the Board issue a protective order allowing Riffin to make available to the Board, under seal, certain highly confidential documents and information in connection with his Notice of Exemption (“NOE”) in the above captioned case, which Riffin filed on **March 30, 2009**. Such highly confidential documents include marketing data, which Riffin does not want published in the public docket. Accordingly, Riffin requests that the Board adopt the protective order contained in the appendix hereto.

2. Riffin requests the Board designate the material contained in the protective order **HIGHLY CONFIDENTIAL**, for the following reasons:

3 Riffin spent many hours canvassing local businesses, in order to ascertain which businesses might benefit from freight rail service, and spent considerable time researching the transportation needs and requirements of those businesses that could benefit from rail service.

The relationship between Riffin and those businesses is tenuous, and will remain tenuous until such time that Riffin demonstrates that he can in fact provide freight rail service in Cockeysville.

4. Norfolk Southern and the Maryland Transit Administration (“MTA”) have demonstrated a commitment to preventing freight rail service from every being provided in Cockeysville again

A. In *Norfolk Southern Railway Company – Petition for Exemption – Abandonment of Freight Operating Rights and of Rail Freight Service Between Baltimore, MD and Cockeysville, MD – in Baltimore County, MD*, STB Docket No. AB-290 (Sub - No. 237X) (“NS Abandonment,” or “Cockeysville Industrial Track,” or “CIT”), Riffin provided the Board with statements from a number of Cockeysville shippers, which statements indicated the shippers had a desire for freight rail service. One of those shippers was Packard Fence Company, which leased the Cockeysville Freight Station from the MTA. Three weeks after Riffin filed the letter of support from Packard Fence, MTA officials informed Packard Fence that the MTA was voiding his lease, and ordered Packard Fence to vacate the premises within 30 days. The ‘reason’ given by the MTA for canceling Packard Fence’s lease, was that the MTA wanted to use the building ‘for office purposes.’ That was three years ago. The MTA never used the building for ‘office purposes,’ nor for any other purpose. The building and property have sat vacant for the past three years. Packard Fence was forced to relocate its business to another location, which replacement location was in a corner of a nearby industrial park, with no visibility whatsoever. Appended to, and identified as Exhibit 1, in the MTA’s April 20, 2007 Response in the NS Abandonment Proceeding, was a verified statement (“V.S.”) by Mr. Williams. In ¶10 of that V.S., Mr. Williams falsely stated that Packard Fencing’s lease was terminated “to comply with federal homeland security requirements.” Mr. Stakum, the owner of Packard Fencing, expressly told Riffin that the reason given by the MTA was to use his building ‘for offices.’ The MTA’s lease termination letter sent to Mr. Stakum, which Riffin read, did not state the lease was being terminated “to comply with homeland security requirements.” Mr. Williams’ statement lacks credibility, since the lease to the cabinet maker in the adjacent building, was not terminated. Furthermore, the light-rail tracks are one-half mile south of this location, and pursuant to the agreement with the MTA and Norfolk Southern, this portion of the CIT is used and maintained exclusively by Norfolk Southern. [One-half mile south of this location, is a sign that says, “End of MTA use.”]

**B. In 2005, MTA officials visited the three shippers who were actively using the CIT [Imerys, Fleischmann's Vinegar, and BGE]. The MTA officials gave the three shippers an ultimatum: That commencing in December, 2005, all freight rail service on the CIT was going to cease, and that commencing on December 1, 2005, the shippers would have to utilize motor carriers for their shipping needs. The shippers objected strenuously. After many acrimonious confrontations, the MTA agreed to subsidize the shipper's extra shipping costs, providing the shippers agreed to write letters to the Board saying that they did not object to NS abandoning the CIT. Each of the shippers was offered subsidies of \$750,000 +/-, which subsidy contract can be revoked by the MTA at any time at the MTA's sole discretion. This is why the Board has not received any objections from the three former active shippers on the CIT. [Riffin was provided with a copy of a subsidy contract, but is fearful that if he provides a copy to the Board, the MTA will retaliate against the shipper by canceling the shipper's subsidy contract.]**

**C. As Riffin demonstrated in the NS Abandonment proceeding, the MTA has removed much of the track infrastructure on the CIT: The sidings that formerly served Imerys and the Texas quarry; the sidings that formerly served the Cockeysville Industrial Park (four shippers were formerly in the Cockeysville Industrial Park, including Noxell); the railroad bridge that carried the CIT over York Road; the track material that carried the CIT from Cockeysville to Ashland, MD; the Cockeysville Road grade crossing; and the sidings that formerly served the Veneer Industrial Park.**

**5. The MTA is a competitor.** The MTA has demonstrated that it strongly prefers Cockeysville shippers utilize motor carriers. The MTA has used its position as a State agency to intimidate and coerce potential rail shippers into using motor carriers rather than rail. If the MTA were to learn who Riffin's potential shippers are, within days after obtaining that information, MTA officials or their agents, would visit those shippers and would intimidate / coerce those potential shippers into withdrawing their expressed desire to utilize freight rail service. Since the MTA is not subject to the Board's jurisdiction, the Board would be powerless to enjoin such actions.

**6. Riffin views the MTA as a competitor:** The MTA is willing to offer, and has offered, "the most favorable [transportation] terms," "in the same market," that Riffin proposes to serve. The MTA offered, and continues to pay, a substantial subsidy [in excess of \$100,000 per year], to the three former shippers on the line [Imerys, Fleischmann's Vinegar, BGE], so long as these

shippers utilize motor carriers, rather than the adjacent rail carrier, for their shipping needs. By offering shippers subsidies to utilize trucks, rather than the adjacent rail service, to ship their goods, the MTA is "selling services in the same market as another." [The MTA is 'selling' trucking services, by subsidizing the extra costs associated with using trucks to move goods, rather than utilizing the rail service that is available.]

7. Riffin is willing to provide to the Board, and to Norfolk Southern's and the MTA's outside counsel, for their eyes only, the market data and other material contained in Riffin's Protective Order. The appropriate means for restricting Riffin's market data to outside counsel, is via a Protective Order that designates the data Highly Confidential

8. The MTA is represented by outside counsel. The MTA has not provided any compelling reason why any of its employees have any need to view Riffin's highly confidential material. Restricting Riffin's confidential information to the MTA's outside counsel, would not unduly burden the MTA. Norfolk Southern has taken no position with regard to Riffin's request for a Protective Order. In another matter involving Riffin and Norfolk Southern, Norfolk Southern has hired outside counsel. Consequently, restricting Riffin's highly confidential material to Norfolk Southern's outside counsel would not unduly burden Norfolk Southern. Riffin finds it disingenuous for the MTA to argue that it needs access to Riffin's confidential information, while MTA's outside counsel has made no effort to view Riffin's confidential information, even though it has been available for the past six weeks [since February 19, 2009], and could have been viewed by the MTA's outside counsel had the MTA's outside counsel tendered an Undertaking

9. In the event the Board is unwilling to classify Riffin's market data as Highly Confidential, and is unwilling to limit who may view this information to outside counsel only, then Riffin will respectfully withdraw his offer to provide this information, and will ask that it be returned to Riffin prior to outside counsel obtaining a copy of this information.

10. I affirm under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

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Filed March 30, 2009

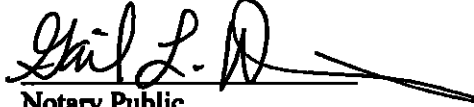
Respectfully submitted,

  
James Riffin

STATE OF MARYLAND, BALTIMORE COUNTY, to wit

I HEREBY CERTIFY, that on this 30<sup>th</sup> Day of March, 2009, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Motion for Protective Order, and who acknowledged that he executed the same, for the purposes therein contained

AS WITNESS my hand and notarial seal.

  
Notary Public

My commission expires: 12/1/09

### CERTIFICATE OF SERVICE

I hereby certify that on this 30<sup>th</sup> day of March, 2009, a copy of the foregoing Motion for a Protective Order, was served by first class mail, postage prepaid, upon James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Law Department, Three Commercial Place, Norfolk, VA 23510, and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for the Maryland Transit Administration and Maryland Department of Transportation.

  
James Riffin

## **APPENDIX**

### **PROTECTIVE ORDER**

1. For purposes of this Protective Order, "Highly Confidential Information" means the data and documents appended to this Protective Order and furnished to the Board by James Riffin ("Riffin") in connection with his NOE, in the above-captioned matter, STB Finance Docket No. 35236.

2. Highly Confidential information shall be provided to Outside Counsel of any party to this proceeding only pursuant to this Protective Order and only upon execution and prior delivery to Riffin of the attached Undertaking. Highly Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or any other purpose. Highly Confidential Information shall not be provided or disclosed to any person or entity who is not Outside Counsel to a party to this proceeding.

3. Highly Confidential Information shall not be disclosed in any way or to any person without the prior written consent of Riffin, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms and has executed the attached Undertaking prior to receiving access to this information

4 Any documents containing Highly Confidential Information must be destroyed, and notice of such destruction must be served on Riffin, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first

5. If the Board retains the Highly Confidential Information, it shall, in order to keep it Highly Confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Highly Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Highly Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Highly Confidential Information in accordance with the Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein

## **UNDERTAKING**

### **HIGHLY CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin ("Riffin") in STB Finance Docket No. 35236, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 35236, or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Riffin shall be entitled to specific performance and injunctive and / or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all other remedies available at law or equity.

Signed: \_\_\_\_\_ Address: \_\_\_\_\_

Position \_\_\_\_\_

Affiliation: \_\_\_\_\_ Telephone: \_\_\_\_\_

Dated: \_\_\_\_\_

## HIGHLY CONFIDENTIAL INFORMATION

Appended hereto is

- A. A copy of the Lease Agreement between Mark Downs and James Riffin. *Redacted*
- B. Market data indicating who potential shippers are, the products being shipped, and the estimated number of rail cars of traffic per year each shipper presently ships via motor carriers *Redacted*
- C. Copies of letters from shippers who have expressed an interest in utilizing rail service if it becomes available *Redacted*